

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

**STATEMENT OF THE MONTANA UNIVERSAL SERVICE TASKFORCE
(MUST) BEFORE AN EN BANC HEARING OF THE FEDERAL-STATE JOINT
BOARD ON UNIVERSAL SERVICE**

The issues raised by the Joint Board in its Public Notice are of critical importance, and we at MUST¹ commend both the Joint Board and the FCC for giving interested parties an opportunity to comment and to participate in this en banc hearing. Congress stated quite clearly in the Telecommunications Act that universal service was to be considered a cornerstone of national telecommunications policy.² We are therefore hopeful that the identified issues will be resolved in the manner most calculated to continue to support, promote and advance universal service according to the principles set forth by Congress.³

¹ The members of MUST are: Blackfoot Telephone Cooperative, CC Communications, Central Montana Communications, InterBel Telephone Cooperative, Nemont Telephone Cooperative, Northern Telephone Cooperative, Project Telephone Company, 3 Rivers Telephone Cooperative, Triangle Telephone Cooperative Association and Valley Telecommunications

² SEE, Generally, 47 U.S.C. §254

³These principles are set forth in 47 U.S.C. §254(b)

We at MUST believe that those principles face serious threats. In part, these threats arise out of policy directions that have already been established by regulators that we believe need to be reexamined. For example, the FCC has held that a mere promise to provide service at some undefined point in the future across a rural telephone company's entire service area is sufficient to meet Congress' requirement in 47 U.S.C. §214(e)(1) that a competitive ETC applicant must offer the supported services "throughout the service area for which the designation is received" ⁴ However, the FCC failed to establish any time limits within which the competitive ETC applicant must actually provide service throughout the rural telephone company's service area. The FCC also failed to establish any penalty whatsoever in the event that the competitive ETC applicant never meets the coverage requirement of the Act. In fact, the only language in the order that even remotely addresses these shortcomings is the FCC's "caution that a demonstration of the capability and commitment to provide service must encompass something more than a vague assertion of intent on the part of a carrier to provide service." ⁵ On its face, this ostensibly restrictive language requires only that a competitive ETC's application may not be "vague." Again, so long as the application is not "vague," the promise of service across an entire study area need never be kept, and no penalty inures for failing to keep this promise. Essentially, the FCC is encouraging cream skimming. This declaratory ruling by the FCC is a misreading of the clear language of the Telecommunications Act and is therefore in fundamental conflict with Congressional intent. The Joint Board should recommend that the FCC revisit this decision.

⁴ In the Matter of the Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168 (2000) ("South Dakota Declaratory Ruling")

⁵ Id. at page 11, paragraph 24

Other examples of threats to universal service include: 1) the FCC and Joint Board's inadequate current definition of universal service, 2) the increasingly burdensome shifts in cost recovery to rural end user local rates, as evidenced by recent aggressive increases in subscriber line charges; 3) the promotion of a "bill and keep" regime for interstate access services that would very likely further shift the burden of cost recovery to end user local rates in rural areas; and 4) the arbitrary redefining of study area boundaries to accommodate competition while ignoring the implications on the efficiency and costs associated with the operation of the underlying incumbents' total networks.

The resolution of the issues raised in this docket by the Joint Board must be accomplished within the context of the totality of regulatory decisions and trends in current regulatory thinking that affect universal service. To do otherwise would ignore the cumulative affect of all of the regulatory activity in this area and the possible detrimental affect of this activity on rates and service quality in rural and other high-cost areas.

With respect to the specific issues raised by the Joint Board in this inquiry, recent projections from USAC indicate quite clearly that the designation of multiple ETCs in areas served by rural telephone companies is already resulting in substantial increases in high-cost funding. This is particularly true with respect to the impact of the designation of wireless CETCs. To the extent such growth makes the high-cost fund a political target, the designation of wireless ETCs threatens the continued viability of the high-cost fund that has so successfully supported universal service in rural America for many years.

With very limited exceptions, wireless service is simply not an adequate replacement for wireline service in rural America. For that reason, wireless ETC

designation (and the funding of wireless ETCs based on the incumbent's costs) is perhaps the greatest current danger to the continued financial viability of the high-cost fund and to the continued provision of high-quality telecommunications services to rural areas.

The growth in financial demand on the Universal Service Fund by wireless ETC applicants is already explosive. In MUST's view, this demand will actually accelerate going forward. Boards of Directors of wireless operations across the country are already confronted with possible exposure to legal action for breach of fiduciary duty if they do not seek ETC designation and the dollars that accompany such designation. Therefore dozens and perhaps even hundreds of wireless providers may seek ETC designation, causing even more growth in the Universal Service Fund, merely to avoid being sued by their shareholders for failing to take advantage of a clear financial opportunity. The irony is that numerous wireless carriers that have been competing for years in rural markets and have built their networks without the need for universal service support find themselves in the position of being essentially forced to apply for ETC designation.

A more insidious effect of wireless ETC designation is the possibility of a "dumbing down" of rural telecommunications networks to a "lowest common denominator" of service. With limited exceptions, the technology platform utilized by wireless carriers in rural areas provides a standard of service that is far below the standard provided by wireline incumbents and far below the standard to which rural subscribers have become accustomed as their link to the world. Further, while these wireless technology platforms may be able to offer the basic list of supported services as identified by the FCC⁶, they are generally not able to provide the wide variety of advanced and custom services provided by incumbent wireline carriers. These concerns

provide the framework for the appropriate scope of the public interest analysis for competitive ETC applications in rural areas. State public utility commissioners should review the level of service currently being provided to rural subscribers in their states. The public interest is served when a competitive ETC applicant is measured against the incumbent provider, using all of the universal service principles set forth in 47 U.S.C. §254(b) as a reference. This would mean comparing the competitor to the incumbent with respect to current basic and advanced telecommunications and information services as well as the ability at the time of the application of the respective providers' technology platforms to offer such services.

As noted above, the FCC has determined that competitive wireless ETCs are to be funded at the same per-line level of support as the incumbent.⁷ While most consumers today appear to consider wireless to be a complementary service rather than a substitute for wireline service, the loss of a relatively small percentage of high-revenue customers by small, rural telephone companies has a high potential for irreparably damaging those rural telcos' long-term financial viability.

To the extent competitive wireless ETCs constitute a threat to the continued economic viability of incumbent rural wireline carriers, they are also a threat to the continued ability of subscribers in rural areas to receive services like high-speed Internet access, video conferencing and even video programming. This is because the incumbent in many cases is the only entity capable of offering such services in the most rural and remote areas of the country. Congress could not have been clearer when it stated that “[a]ccess to advanced telecommunications and information services should be provided

⁶ 47 CFR §54.101

⁷ 47 CFR §54.307

in all regions of the Nation.”⁸ In highly rural areas, the number of technology platforms that can offer advanced services is usually quite limited. In the most of the service areas served by the MUST members, there is only one such provider – the local rural telephone cooperative or company. Neither the Joint Board nor the FCC should be picking and choosing which of the principles identified in section 254(b)(1) should be considered during the ETC application process and which should not. All of the principles should apply to any ETC application and are a convenient starting place for a public interest analysis.

This raises the question of whether the FCC should establish guidelines for state commissions to use in making their public interest findings. Based on the FCC’s past statements with respect to public interest analysis of competitive ETC applications in the areas of non-rural incumbents, the answer is a resounding “no.” The FCC has held that a competitive ETC applicant’s demonstration of compliance “with the statutory eligibility obligations of section 214(e)(1) is consistent *per se* with the public interest” when the area at issue is served by a non-rural incumbent.⁹ Again, the FCC’s interpretation is inconsistent with Congressional intent. There would be no purpose for including the term “public interest” in the federal statute if it did not have meaning beyond the explicit obligations set forth in section 214(e)(1). Given this precedent, rural telephone companies have no reason to suspect that “public interest” will be given any more teeth when applied to competitive ETC applications in areas served by rural telephone

⁸ 47 U.S.C. §254(b)(2)

⁹ In the Matter of Federal-State Joint Board on Universal Service; Celco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier; CC Docket No. 96-45; Order No. DA 00-2895 (Released December 26, 2000)

companies. Since the “interested public” in such cases are our rural subscribers, we cannot see those interests being protected by guidelines promulgated by the FCC.

Some in the wireless industry have argued in the past that wireless ETC designation is necessary to fill unmet demand. Wireless ETCs are not in a position, at least with respect to the service areas served by MUST’s members, to fill unmet demand or underserved areas because there is virtually no unmet demand and no underserved areas in our service areas. Line growth in the rural areas we serve has been largely flat, and our subscribership rates are comparable to subscribership rates across the country at around 95%.

The geographic areas served by the MUST members are vast and among the most sparsely populated in the nation. In order for a single carrier to provide services in such area at affordable rates, funding from the Universal Service Fund is critical. Funding a second carrier, particularly when such funding bears no rational relationship to the second carrier’s costs, is not competitively neutral and creates competitive inefficiencies. The costs of an incumbent, which provides a network with superior functionality, carrier-of-last resort obligations and regulatory compliance expenditures, are simply an inappropriate basis for supporting wireless competitors with completely different cost structures and obligations. Hence funding competitive carriers based on the incumbent’s costs places greater weight on promoting competition than on supporting universal service. Such funding does not balance the statutory goals of competition and universal service in the manner intended by Congress.¹⁰

¹⁰ While the stated purpose in the title of the Act is “to promote competition . . .,” in section 254(b)(3), the Act states that access to basic and advanced telecommunications and information services must be reasonable comparable between urban and rural areas at reasonably comparable rates.

The focus of regulatory action with respect to universal service should first and foremost be upon the needs of the rural subscribers. Subscribers across rural America are receiving exceptional basic and advanced services from rural telephone companies today. While the high-cost funding received by incumbents continues to grow, that growth is in no small part due to the regulatory shifting of cost recovery by the FCC from interstate access charges to the Universal Service Fund. If regulators want to control the growth of the fund, they should focus on controlling growth resulting from the inefficient designation of wireless CETCs. Proposals such as the auctioning of universal service or limiting funding to the lowest-cost provider will only harm the quality of service received by rural subscribers.

Finally, our observations at MUST are that wireless CETCs have repeatedly resisted attempts to require them to provide information regarding their costs, their expenditures, or their quality of service with respect to the provision of universal service. Such carriers argue that such requirements are inconsistent with their unregulated status. At the same time, they have no problem seeking ETC designation from regulators or accepting checks from the high-cost fund. The cost to rural telephone companies of submitting detailed information to regulators and others (e.g., USAC, NECA) justifying their receipt and expenditure of universal service funding is not inconsiderable. Moreover, our books are periodically audited by these same entities, requiring additional staff time and expense. Regardless of whether the “identical support rule” remains in effect, fairness requires that wireless CETCs share the same burden. To do otherwise would imply that regulators trust the wireless CETCs but do not trust rural telephone companies.

RESPECTFULLY SUBMITTED this 21st day of July, 2003

Michael C. Strand
Counsel for the Montana Universal Service Taskforce
(MUST)